

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

NICKOLAS GORDON
KJELDERGAARD,

Plaintiff,

v.

EASMON, et al.,

Defendants.

No. 2:22-cv-01283-CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

I. Screening Requirement

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th

1 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
2 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
3 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
4 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
5 Cir. 1989); Franklin, 745 F.2d at 1227.

6 In order to avoid dismissal for failure to state a claim a complaint must contain more than
7 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause
8 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,
9 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
10 statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim
11 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A
12 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
13 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S.
14 at 678. When considering whether a complaint states a claim upon which relief can be granted,
15 the court must accept the allegations as true, Erickson v. Pardus, 551 U.S. 89, 93-94 (2007), and
16 construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416
17 U.S. 232, 236 (1974).

18 **II. Allegations in the Complaint**

19 At all times relevant to the allegations in the complaint, plaintiff was a prisoner at the
20 California Correctional Facility (“CCF”). He names two correctional officers employed at CCF
21 as well as the Office of Grievances and the Office of Appeals as defendants in this action.

22 Plaintiff alleges that defendant Easmon set him up to be attacked by other inmates on May
23 8, 2021. The complaint does not provide any additional details about this incident. Secondly,
24 plaintiff asserts that defendant Kosub falsified property records and let other inmates steal
25 plaintiff’s property. The remainder of the allegations in the complaint concern the grievance
26 procedure that plaintiff utilized in an effort to get reimbursed for his lost property and for the staff
27 complaint against defendant Easmon.

28 By way of relief, plaintiff seeks financial reimbursement for his stolen property, an

1 investigation into the corrupt actions of defendants, and accountability for the physical harm that
2 he experienced.

3 **III. Legal Standards**

4 The following legal standards are being provided to plaintiff based on his pro se status as
5 well as the nature of the allegations in the complaint.

6 **A. Linkage Requirement**

7 The civil rights statute requires that there be an actual connection or link between the
8 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
9 Monell v. Department of Social Services, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
10 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation of a
11 constitutional right, within the meaning of section 1983, if he does an affirmative act, participates
12 in another’s affirmative acts or omits to perform an act which he is legally required to do that
13 causes the deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th
14 Cir. 1978) (citation omitted). In order to state a claim for relief under section 1983, plaintiff must
15 link each named defendant with some affirmative act or omission that demonstrates a violation of
16 plaintiff’s federal rights.

17 **B. Failure to Protect**

18 Under the Eighth Amendment, “prison officials have a duty to protect prisoners from
19 violence at the hands of other prisoners.” Farmer v. Brennan, 511 U.S. 825, 833 (1994) (internal
20 quotation marks, ellipsis, and citation omitted). However, “not . . . every injury suffered by one
21 prisoner at the hands of another . . . translates into constitutional liability for prison officials
22 responsible for the victim’s safety.” Id. at 834. A prison official may be held liable for an assault
23 suffered by one inmate at the hands of another only where the assaulted inmate can show that the
24 injury is sufficiently serious, and that the prison official was deliberately indifferent to the risk of
25 harm. Id. at 834, 837. Thus, the relevant inquiry is whether prison officials, “acting with
26 deliberate indifference, exposed a prisoner to a sufficiently substantial risk of serious damage to
27 his future health.” Id. at 834 (internal quotation omitted). To be deliberately indifferent, the
28 “official must both be aware of facts from which the inference could be drawn that a substantial

1 risk of serious harm exists, and he must also draw the inference.” Id.

2 **C. Property**

3 The United States Supreme Court has held that “an unauthorized intentional deprivation
4 of property by a state employee does not constitute a violation of the procedural requirements of
5 the Due Process Clause of the Fourteenth Amendment if a meaningful postdeprivation remedy for
6 the loss is available.” Hudson v. Palmer, 468 U.S. 517, 533 (1984). Thus, where the state
7 provides a meaningful postdeprivation remedy, only authorized, intentional deprivations
8 constitute actionable violations of the Due Process Clause. An authorized deprivation is one
9 carried out pursuant to established state procedures, regulations, or statutes. Piatt v. McDougall,
10 773 F.2d 1032, 1036 (9th Cir. 1985); see also Knudson v. City of Ellensburg, 832 F.2d 1142,
11 1149 (9th Cir. 1987).

12 **D. Grievance Procedure**

13 Prisoners do not have “a separate constitutional entitlement to a specific prison grievance
14 procedure.” Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (citing Mann v. Adams, 855
15 F.2d 639, 640 (9th Cir. 1988)). Accordingly, the prison grievance procedure does not confer any
16 substantive constitutional rights upon inmates and actions in reviewing and denying inmate
17 appeals generally do not serve as a basis for liability under section 1983. Id.

18 **IV. Analysis**

19 The court has reviewed plaintiff’s complaint and finds that it fails to state a claim upon
20 which relief can be granted under federal law. The allegations against defendant Easmon are too
21 conclusory and do not contain sufficient detail for the court to determine whether he was
22 deliberately indifferent to plaintiff’s safety in violation of the Eighth Amendment. Regarding the
23 claim against defendant Kosub involving the loss of property, California state law authorizes civil
24 tort claims against state officials under the Government Claims Act. See Barnett v. Centoni, 31
25 F.3d 813, 816-17 (9th Cir. 1994); Cal. Gov’t Code §§ 810-895. Since plaintiff has an adequate
26 post-deprivation remedy, he fails to state a valid federal constitutional claim for the loss of his
27 property. See King v. Massarweh, 782 F.2d 825, 827 (9th Cir. 1986) (emphasizing that “post-
28 deprivation proceedings are sufficient to meet due process standards.”). The allegations against

1 the Office of Grievances and Office of Appeals do not state a claim for relief because plaintiff
2 does not have a federal constitutional right to any specific prison grievance procedure. See
3 Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003). For all these reasons, plaintiff's complaint
4 must be dismissed. The court will, however, grant leave to file an amended complaint.

5 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
6 complained of have resulted in a deprivation of plaintiff's constitutional rights. See Ellis v.
7 Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, in his amended complaint, plaintiff must allege in
8 specific terms how each named defendant is involved. There can be no liability under 42 U.S.C.
9 § 1983 unless there is some affirmative link or connection between a defendant's actions and the
10 claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976). Furthermore, vague and conclusory
11 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of
12 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

13 Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to
14 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended
15 complaint be complete in itself without reference to any prior pleading. This is because, as a
16 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
17 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no
18 longer serves any function in the case. Therefore, in an amended complaint, as in an original
19 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

20 **V. Plain Language Summary for Pro Se Party**

21 The following information is meant to explain this order in plain English and is not
22 intended as legal advice.

23 The court has reviewed the allegations in your complaint and determined that they do not
24 state any claim against the defendants. Your complaint is being dismissed, but you are being
25 given the chance to fix the problems identified in this screening order.

26 Although you are not required to do so, you may file an amended complaint within 30
27 days from the date of this order. If you choose to file an amended complaint, pay particular
28 attention to the legal standards identified in this order which may apply to your claims.

1 Accordingly, IT IS HEREBY ORDERED that:

2 1. Plaintiff's complaint is dismissed.

3 2. Plaintiff is granted thirty days from the date of service of this order to file an amended
4 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
5 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket
6 number assigned this case and must be labeled "Amended Complaint." Failure to file an
7 amended complaint in accordance with this order will result in a recommendation that this action
8 be dismissed.

9 Dated: January 12, 2023



10 CAROLYN K. DELANEY
11 UNITED STATES MAGISTRATE JUDGE

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